

TEXAS COMMERCE BANK - AUSTIN

NATIONAL ASSOCIATION

REAL ESTATE DEPARTMENT

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FEB 25 1991 - 10 10 AM
February 6, 1991

INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission
12th Street and Constitution Ave., N.W.
Room 2303
Washington, D. C. 20423
Attention: Mildred Lee

Dear Ms. Lee:

Enclosed please find the following documents delivered to you for filing: *Bill of Sale dtd 5/11/79*

- 2* Two original Security Agreement-Equipment dated effective February 6, 1991, between William H. Cunningham and Isabella Cunningham of 1106 Kennan Road, Austin, Texas, 78746 and Texas Commerce Bank-Austin, National Association of 700 Lavaca, Austin, Texas 78701;
- 3* Two original Security Agreement-Assignment of Contract Rights dated effective February 6, 1991, between William H. Cunningham and Isabella Cunningham of 1106 Kennan, Austin, Texas, 78746 and Texas Commerce Bank-Austin, National Association of 700 Lavaca, Austin, Texas 78701; and
- 4* One original and one notarized copy of the Management Agreement dated August 1, 1989 between GLNX Corporation, 25231 Grogan's Mill Road, Suite 500, The Woodlands, Texas 77380 and William H. Cunningham of 1106 Kennan Road, Austin, Texas 78746. *Bill of Sale*

The enclosed documents are being submitted for filing. Accordingly, a cashier's check in the amount of \$45.00 is enclosed as the filing fee for all three documents.

Library A1
Document 20882



Austin

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The rolling stock involved in the transaction is described as follows:

One (1) 23,500 gallon nominal capacity tank car, DOT 111A100W3, exterior coiled and insulated; 100-ton roller bearing trucks bearing number GLNX 3573; and

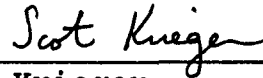
One (1) 34,000 gallon nominal capacity tank car, DOT 105J300W, non-coiled and insulated; 100-ton roller bearing trucks bearing number GLNX 34155.

After the documents have been filed, please return the originals to Mr. Scot Krieger, Texas Commerce Bank-Austin, National Association, 700 Lavaca, Austin, Texas 78701.

Thank you for your cooperation.

Very truly yours,

TEXAS COMMERCE BANK-AUSTIN,
NATIONAL ASSOCIATION



Scot Krieger
Assistant Vice President

llg

Enclosures

17234

FEB 25 1991 -10 44 AM

INTERSTATE COMMERCE COMMISSION

MANAGEMENT AGREEMENT

THIS AGREEMENT between GLNX Corporation, a Texas corporation having its principal place of business in The Woodlands, Texas ("GLNX"), and William H. Cunningham, resident of Austin, Texas (the "Owner"),

W I T N E S S T H:

WHEREAS, the Owner owns the railway equipment listed on the attached Exhibit A (the "Equipment") and wants GLNX to manage the Equipment; and

WHEREAS, GLNX is willing to manage the Equipment under the terms of this Agreement;

NOW, THEREFORE, GLNX and the Owner agree as follows:

ARTICLE I

Appointment and Delivery of Equipment

1. By executing this Agreement, the Owner appoints GLNX to manage and supervise the Equipment. GLNX accepts the appointment and agrees to perform the duties imposed on it by this Agreement. In performing those duties, GLNX may act either in the name of the Owner, or in its own name but for the account of the Owner.

2. Unless this Agreement or applicable law specifically states otherwise, GLNX's authority to manage the Equipment is exclusive. GLNX shall have the sole responsibility for, and sole control of, the leasing, operation, maintenance and repair, and general management of the Equipment.

3. The Equipment shall be deemed to be delivered to, and accepted by, GLNX upon execution of this Agreement by GLNX.

ARTICLE II

GLNX's Responsibilities

1. GLNX will use its best efforts to keep the Equipment leased to third parties throughout the term of this Agreement under written lease agreements ("Lease Agreements") which GLNX will execute in its name, but which will be for the account of the Owner.

2. GLNX will collect all rentals and other revenues earned by the Equipment and which are not for the benefit of lessees of the Equipment (collectively, the "Lease Fees"), and will attempt to otherwise enforce all Lease Agreements. GLNX will not, however, be required to file suit to collect Lease Fees or to otherwise

enforce a Lease Agreement, although GLNX may do so at its option as provided in Article V.

3. GLNX will perform for the Owner the obligations and duties of the lessor under all Lease Agreements. If for any reason, however, any Equipment becomes subject to a Lease Agreement not executed by GLNX, then GLNX will not be responsible for compliance with that Lease Agreement unless GLNX has specifically approved in writing all terms and conditions of that Lease Agreement.

4. GLNX will make all registrations and other filings required to be made with respect to the Equipment with the Interstate Commerce Commission, the Association of American Railroads, the Department of Transportation or any other governmental or industry authority.

5. GLNX will file all ad valorem tax returns required to be filed with respect to the Equipment and will pay all ad valorem taxes shown as due on such returns. The economic burden of such taxes shall be borne by the Owner as provided in Section 3 of Article III.

6. For the Owner's account, GLNX will contract or otherwise arrange for all repairs to and maintenance of the Equipment which GLNX considers necessary or appropriate.

7. For the Owner's account, GLNX will maintain public liability and property damage insurance on the Equipment in such amounts and against such risks as are normally maintained by GLNX on all other railway equipment which GLNX manages or owns. Annually, GLNX will furnish the Owner with certificates evidencing the effectiveness of such insurance. Such certificates will also be furnished to the Owner within a reasonable period following the date of any policy change or renewal.

8. GLNX will maintain books and records sufficient to properly account for all Lease Fees and Expenses (as that term is defined in Section 1 of Article III) related to the Equipment.

9. As soon as reasonably practicable following each calendar quarter, GLNX will provide the Owner with a report ("Quarterly Report") reflecting the Lease Fees and the Expenses for the preceding calendar quarter.

10. If Lease Fees for any calendar quarter exceed the sum of Expenses for that quarter plus all other amounts which GLNX is entitled to withhold or retain under this Agreement, GLNX will pay the excess to the Owner on a quarterly basis. Payment of the excess shall accompany the Quarterly Report for that quarter.

11. On behalf of the Owner, GLNX will reasonably pursue warranty and other claims against manufacturers, users, railroads and others with respect to the Equipment. GLNX will not, however,

be required to file suit against such persons, although it may do so at its option as provided in Article V.

12. GLNX will and is authorized to arrange, for the Owner's account, for the scrapping of any Equipment which GLNX considers to have become damaged beyond the point of being economically repairable and any Equipment which requires governmental or industry mandated modifications which GLNX considers cannot economically be made; but before doing so, GLNX shall notify the Owner of its recommendation to so do and shall allow the Owner the opportunity, at his expense, to make the repairs or modifications if he chooses. The foregoing provisions shall not apply to any item of damaged or destroyed Equipment where a railroad, under the Interchange Rules of the Association of American Railroads, is liable for payment of the depreciated value of such item of Equipment. In each such instance, GLNX will collect from the responsible railroad, for the account of the Owner, any amount which the railroad, under such rules, is obligated to pay.

13. GLNX will give the Owner and his designated representatives access, upon reasonable notice and during normal business hours, to GLNX's books and records pertaining to the Equipment.

ARTICLE III

Owner's Responsibilities

1. The Owner will be responsible for all costs and expenses (collectively, the "Expenses") incurred in connection with the ownership, maintenance, leasing and operation of the Equipment. The Expenses for which the Owner is responsible include (but are not necessarily limited to) ad valorem and similar taxes (which the Owner will pay as provided in Section 3 of this Article III), all contract and AAR repair charges, freight, storage, excess mileage equalization costs, all costs of design changes and other modifications required by governmental or industry regulations or by technological changes, inspection costs, cleaning costs, insurance premiums and deductibles, and the Management Fee provided for in Article IV.

2. The Owner agrees to pay a portion of the aggregate ad valorem, gross receipts, property and other similar taxes levied against all tank cars (including the Equipment) managed or owned by GLNX (the "GLNX Fleet") determined by multiplying the aggregate amount of such taxes levied against the GLNX Fleet by an allocation percentage. The allocation percentage will be determined by dividing all Lease Fees earned by the Equipment during the taxable period in question by the aggregate revenues earned by the GLNX Fleet during that period. To provide for the payment of such taxes, GLNX may withhold from each payment it makes to the Owner an amount equal to three percent of the Lease Fees for the period covered by that payment. As soon as practicable following the end of each calendar year, GLNX will either remit to the Owner any amounts withheld for this purpose which exceed the Owner's pro rata

portion of the aggregate taxes levied against the GLNX Fleet for that year or will invoice the Owner for any deficiency.

3. If for any period Expenses exceed Lease Fees, GLNX will so advise the Owner in writing, and the Owner must pay the deficiency to GLNX within ten days after the date of the notice. Notice of such a deficiency may be given in a Quarterly Report.

4. If at any time GLNX reasonably anticipates that Expenses for any future period will exceed Lease Fees for that future period, GLNX may withhold from previously earned Lease Fees, and retain, an amount equal to the expected deficiency. GLNX agrees to use reasonable judgment in retaining Lease Fees to provide for future anticipated deficiencies, and GLNX will attempt to minimize the effect of any such retention on cash distributions to the Owner.

5. Under no circumstances will GLNX be required to pay Expenses from its own funds or to make advances for the Owner's account for that purpose, regardless of the consequences of nonpayment of such Expenses.

6. The Owner agrees to fully cooperate with and assist GLNX in connection with GLNX's performance of its duties under this Agreement, to the extent GLNX may reasonably request that the Owner do so.

ARTICLE IV

Management Fee

For its management services under this Agreement, the Owner will pay GLNX a management fee (the "Management Fee") equal to ten percent of all Lease Fees collected on the Equipment. GLNX will deduct the Management Fee from its quarterly remittances to the Owner.

ARTICLE V

Legal Actions

If legal proceedings involving the Equipment are instituted by or against GLNX, GLNX will give the Owner written notice of that fact. The notice shall be given at least ten days prior to the institution of such legal proceedings by GLNX, and not more than ten days after GLNX is served with process in any such legal proceedings against GLNX. Unless the Owner immediately otherwise instructs GLNX in writing, GLNX at its option, may institute or defend, in its name or in the Owner's name or both, all legal actions or proceedings involving the Equipment. Examples of action or proceedings which GLNX may institute include actions or proceedings to:

- (i) collect Lease Fees or otherwise enforce Lease Agreements;

(ii) oust or dispossess a lessee or other person in possession of Equipment;

(iii) lawfully terminate any Lease Agreement which a lessee has breached or under which a default has occurred; and

(iv) protest or litigate to a final decision in any court or other appropriate forum any violation, order, rule, regulation, suit or other claim involving or affecting the Equipment.

GLNX will keep the Owner reasonably advised of the progress of any such actions or proceedings. All such actions or proceedings shall be prosecuted or defended at the expense of the Owner. If any such litigation involves both Equipment of the Owner and equipment of other owners, expenses of the litigation shall be allocated among the Owner and the other owners based on the number of items of Equipment owned by them which are the subject of the litigation.

This Article V does not apply to any litigation or other proceedings in which the Owner and GLNX are adversaries.

ARTICLE VI

Term and Termination

1. If this Agreement is not sooner terminated under one of the following Sections of this Article VI, it will terminate on the latest to occur of (i) tenth anniversary of its effective date or (ii) six months following written notice by either GLNX or the Owner to the other of an intent to terminate this Agreement.

2. If one party breaches its obligations under this Agreement, the nondefaulting party shall give the defaulting party written notice of the breach. If the breach or default is not cured or corrected within 30 days of the date of the notice of default, the nondefaulting party may terminate this Agreement at any time after the 30-day period. A termination of this Agreement under this Section 2 will be without prejudice to the rights on the terminating party. To terminate the Agreement under this Section 2, the Owner must have paid to GLNX all amounts the Owner owed GLNX under this Agreement, through the date of termination.

3. If upon any termination of this Agreement, whether under Section 1 or sooner under Section 2 of this Article VI, any of the Equipment is subject to a Lease Agreement which has not expired, then GLNX, at its option, shall be entitled to continue to manage and control the Equipment which is subject to the continuing Lease Agreement, and to continue to pay Expenses and retain its Management Fee with respect to that Equipment, until expiration of the term of the continuing Lease Agreement.

4. Upon termination of this Agreement as to any Equipment, all recording and UMLER car initials and numbers and other designations (collectively, the "Designations") appearing on or assigned to the Equipment and which belong to GLNX, will promptly be changed at the Owner's expense. GLNX, at its expense, will prepare the documentation it considers necessary to change the Designations and will reasonably assist the Owner in any required filing of the documentation. The Owner, if requested by GLNX, will sign the required documentation and will take all other steps which GLNX considers necessary to change the Designations.

ARTICLE VII

Indemnification

The Owner agrees to indemnify GLNX and hold it harmless from all claims, demands, causes of action, costs, damages, expenses, judgments and attorney's fees (collectively, "Losses") which any third party may assert against GLNX and which are based on or relate to the Equipment or its ownerships or operation. The only exception to the obligation of the Owner to so indemnify GLNX shall be in cases where it has been judicially determined that the cause of action giving rise to a Loss was based solely on the negligence of GLNX or resulted from an action of GLNX taken in violation of this Agreement. In that case, GLNX will indemnify the Owner and hold him harmless from all his Losses resulting from GLNX's negligence or violation of this Agreement.

ARTICLE VIII

Right of First Refusal

1. GLNX shall have a right of first refusal to purchase the Equipment, and the Owner shall not sell the Equipment unless the provisions of this Article VIII have been complied with.

2. If the Owner wishes to sell any or all of the Equipment, he shall first offer such Equipment for sale to GLNX at the same price at which any proposed third-party purchaser has offered in writing to purchase such Equipment and which the Owner is prepared to accept. Each offer to GLNX under this Article VIII shall be made by a written notice (the "Offering Notice") to GLNX which shall describe the Equipment proposed to be sold, the name of the proposed purchaser, and the purchase price offered by the proposed purchaser. A copy of the written offer from any proposed third party purchaser shall be attached to each Offering Notice.

3. Within 20 days from the date of GLNX's receipt of an Offering Notice, GLNX shall deliver to the Owner a written reply notice accepting or rejecting the Owner's offer made by the Offering Notice. If by the reply notice GLNX accepts the Owner's offer, the reply notice shall constitute an agreement binding on the Owner and GLNX to sell and purchase the Equipment covered by the Offering Notice at the price stated in the Offering Notice.

4. If by its reply notice GLNX declines the Owner's offer, or if GLNX fails to deliver a reply notice within the required 20-day period, the Owner may sell the Equipment covered by the Offering Notice at any time within, but not after, 90 days following the date of delivery of GLNX's reply notice or the lapse of the 20-day period, as applicable; but no such sale shall be made at any price lower than the price stated in the Offering Notice or to any person other than the proposed purchaser identified in the Offering Notice. If after the lapse of such 90-day period, such Equipment has not been sold, all provisions of this Article VIII shall apply to any future sale of Equipment by the Owner.

5. Each purchase and sale of Equipment under this Article VIII shall be completed by delivery by the Owner of such bills of sale and other instruments of transfer as may be appropriate upon payment of the purchase price by GLNX. Any such transaction shall be closed at such time and place as shall be agreed to by GLNX and the Owner, or if no agreement is reached, at GLNX's offices on the 20th day following the date of delivery of GLNX's reply notice (or the first business day thereafter if that day is not a business day).

ARTICLE IX

Assignment

Neither the Owner nor GLNX may assign this Agreement without the written consent of the other. However, (i) upon the Owner's death, his rights under this Agreement, together with the Equipment, may pass to the Owner's estate, heirs or legatees, and (ii) GLNX may assign this Agreement in connection with its merger with or into another corporation, or in connection with a sale of all or substantially all of the assets of GLNX.

ARTICLE X

Miscellaneous

1. GLNX's relationship to the Owner shall be that of an independent contractor. The Owner agrees not to take any action which would alter the legal status of that relationship. The Owner will have no authority or right to enter any contracts or incur any obligations in the name and on behalf of GLNX, or to otherwise bind GLNX in any manner.

2. GLNX confirms that in entering into Lease Agreements with respect to the Equipment, and in performing the obligations of the lessor thereunder, it will act as an agent of the Owner.

3. Notices given under this Agreement shall be sufficient if personally delivered or if mailed, postage prepaid, addressed as follows:

If to GLNX:

GLNX Corporation
25231 Grogan's Mill Road, Suite 500
The Woodlands, Texas 77380

If to the Owner:

William H. Cunningham
1106 Kennan Road
Austin, Texas 78746

Either party may change its address for notice by giving notice to the other party.

4. This Agreement represents the entire agreement of its parties pertaining to the management and operation of the Equipment. This Agreement can be modified or amended only by a written instrument signed by both GLNX and the Owner.

5. Subject to the restrictions on its assignability, this Agreement shall be binding on, and inure to the benefit of, the respective successors, assigns, heirs, executors, and administrators of the parties of this Agreement.

6. This Agreement shall be governed by and construed under the laws of the state of Texas.

IN WITNESS WHEREOF, GLNX and the Owner have executed this Agreement effective as of August 1, 1989.

GLNX CORPORATION

By: Bob Atnip

OWNER

By: W/H

W/H

EXHIBIT "A"
RAILWAY EQUIPMENT

CLASS	CAPACITY	CAR NUMBER
-----	-----	-----
DOT105J300W	34,000 GALLONS	GLNX 34155

ADDENDUM

MANAGEMENT AGREEMENT BETWEEN GLNX CORPORATION AND
WILLIAM H. CUNNINGHAM
Dated August 1, 1989

The cars covered under the above referenced Management Agreement are to be placed in the "Maintenance Pool". The pooling of car repairs is effective for repairs performed after June 1, 1989. The pool will include all repair cost, storage cost, and excess empty mileage cost which are incurred on cars that are in the pool. It will exclude any repair or modification resulting from a latent defect, design modification, or any industry or governmental regulation. It will, however, include any periodic testing currently required by the Association of American Railroads (AAR) and the Department of Transportation (DOT). GLNX will charge an administrative fee of 3% of the total charges incurred by the pool.

GLNX CORPORATION

Bob Atnip Date: 11-6-89

OWNER

WHR Date: _____

copy

ADDENDUM

**MANAGEMENT AGREEMENT BETWEEN GLNX CORPORATION AND
WILLIAM H. CUNNINGHAM
DATED AUGUST 1, 1989**

Effective June 1, 1990, the car(s) listed below has/have been added to the above referenced 10% management agreement between GLNX Corporation and William H. Cunningham.

GLNX 3573

GLNX CORPORATION

Bob Attrip DATE 5.7.90

WILLIAM H. CUNNINGHAM

William H. Cunningham DATE 5/9/90

Bob Attrip
William H. Cunningham